

SENATE BILL 83

By Norris

AN ACT to amend Tennessee Code Annotated, Title 47,  
relative to consumer affairs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-201, is amended by adding the following as a new, appropriately designated subdivision:

( ) "Commissioner" means the commissioner of commerce and insurance;

SECTION 2. Tennessee Code Annotated, Section 47-18-202, is amended by deleting the language "division of consumer affairs in the department of commerce and insurance", the language "division of consumer affairs", and the language "division" wherever that language appears in subsections (a)—(c) and substituting instead the word "commissioner".

SECTION 3. Tennessee Code Annotated, Section 47-18-204, is amended by deleting the section and substituting instead the following language:

(a) The commissioner may deny, suspend, or revoke a registration for:

(1) A violation of any of this part; or

(2) The making of a false statement on the registration application form.

(b) The commissioner may adopt rules to administer this part. The rules shall be adopted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. Tennessee Code Annotated, Section 47-18-207, is amended by deleting the section and substituting instead the following language:

The commissioner shall notify the department of revenue within three (3) working days of any operator whose registration form does not include the operator's exemption

certificate number or the operator's sales tax registration number as required by § 47-18-202(a)(2)(E).

SECTION 5. Tennessee Code Annotated, Section 47-18-208, is amended by deleting the section and substituting instead the following language:

The registration of beauty pageant operators by the division of consumer affairs in the department of commerce and insurance prior to July 1, 2015, shall be transferred to, and be administered by, the division of regulatory boards in the department of commerce and insurance on and after July 1, 2015.

SECTION 6. Tennessee Code Annotated, Section 47-18-210, is amended by deleting the section and substituting instead the following language:

Whenever it appears to the commissioner that an operator is acting in violation of this part, and the commissioner determines that the public health, safety, or welfare is endangered, the commissioner may issue an order to that operator to cease and desist in the violations, without prior notice. The operator shall be afforded an opportunity for a hearing within seven (7) business days to show cause why the order should be lifted, rescinded, or modified.

SECTION 7. Tennessee Code Annotated, Section 47-18-301, is amended by deleting subdivision (3) and renumbering the remaining subdivisions accordingly.

SECTION 8. Tennessee Code Annotated, Section 47-18-305, is amended by deleting subsection (b) and substituting instead the following language:

(b)

(1) A health club shall not enter into or offer to enter into a health club agreement unless the health club is fully operational and available to use by prospective buyers. The commissioner shall, upon application by a health club operator, certify that a health club facility is fully operational if all of the promised equipment and services are available for use by prospective buyers. No payment or promise to pay by a prospective buyer may be accepted by any

health club operator unless and until the health club facility has been certified by the commissioner to be fully operational as described in this part.

(2)

(A) This subsection (b) shall not apply to any health club that has maintained a satisfactory registration with the commissioner for five (5) consecutive years; provided, that those health clubs notify the commissioner by certified mail of their intent to enter into agreements for a location not fully operational as otherwise required by this subsection (b).

(B) A health club's maintenance of satisfactory registration with the consumer affairs division of the department of commerce and insurance prior to July 1, 2015, satisfies the requirement for maintenance of satisfactory registration with the commissioner in subdivision (b)(2)(A), if:

(i) The health club maintained satisfactory registration with the division for five (5) consecutive years prior to July 1, 2015; or

(ii) The health club maintained satisfactory registration with the division for a period of time that was less than five (5) years immediately preceding a period of time that the health club maintained satisfactory registration with the commissioner, which, when both periods of time are added together, total five (5) consecutive years.

(C) In order to be eligible to use this exemption, an operator shall use the same identification as described in any existing facility registration

information as well as use the same federal and state tax accounts for payments of any related taxes due to this extension of operations.

SECTION 9. Tennessee Code Annotated, Section 47-18-305, is further amended by deleting subsection (e) and substituting instead the following language:

(e)

(1) Notwithstanding this part or any rules promulgated pursuant to this part to the contrary, a health club may enter into or offer to enter into a health club agreement with, or accept payment or a promise of payment from, a prospective buyer prior to certification by the commissioner of its facility as fully operational as set forth in subsection (b); provided, that the health club has:

(A) Acquired a property right or interest in this state with respect to the facility;

(B) Filed a registration application with the commissioner as required by § 47-18-309; and

(C) Purchased from a surety company authorized to do business in this state a surety bond in favor of the state of Tennessee in the amount of twenty-five thousand dollars (\$25,000).

(2)

(A) If the commissioner determines, based on the financial statement required by § 47-18-309(a)(3), that the financial condition of the health club is insufficient to protect prospective buyers, then the commissioner may require that the health club post a surety bond in an amount greater than twenty-five thousand dollars (\$25,000), but not to exceed two hundred thousand dollars (\$200,000). The health club shall file a copy of the bond with the commissioner.

(B) A buyer who suffers loss of payments made to a health club prior to certification due to the health club's failure to open the facility may recover the amount of the payments from the surety; provided, that the liability of the surety may not exceed the aggregate amount of the bond regardless of the number or amount of claims filed with the surety.

(C) Upon certification by the commissioner that the health club is fully operational, the health club may cancel the surety bond upon thirty (30) days written notice of cancellation from the surety to the commissioner.

SECTION 10. Tennessee Code Annotated, Section 47-18-309, is amended by deleting the word "division" wherever it appears in the section and substituting instead the word "commissioner".

SECTION 11. Tennessee Code Annotated, Section 47-18-310, is amended by deleting the section and substituting instead the following language:

(a) A certificate of registration shall be valid for one (1) year from the date of issuance and shall be invalid upon expiration until it is renewed.

(b) Application for renewal of a certificate of registration shall be submitted to the commissioner before the expiration date on forms furnished by the commissioner, and shall be accompanied by:

(1) A fee of one hundred fifty dollars (\$150) per location; and

(2) Copies of all membership and health club agreements offered by the health club.

(c) Certificates of registration shall be subject to late renewal for thirty (30) days following their expiration date by payment of the prescribed fee plus a penalty of fifty dollars (\$50.00).

(d) No renewal application will be accepted more than thirty (30) days from its expiration.

(e) Upon compliance with this part by an applicant, the commissioner shall renew a certificate of registration.

SECTION 12. Tennessee Code Annotated, Section 47-18-313, is amended by deleting the word "division" wherever it appears and substituting instead the word "commissioner".

SECTION 13. Tennessee Code Annotated, Section 47-18-314, is amended by deleting the section and substituting instead the following language:

(a) It is unlawful to accept a down payment for a health club agreement in excess of thirty percent (30%) of the total cost of the agreement without a valid certificate of exemption.

(b) Each holder of a certificate of exemption shall display the certificate in a conspicuous place at each location where health club services or facilities are provided.

(c) Certificates of exemption shall be valid for one (1) year from the date of issuance.

(d) Application for renewal of a certificate of exemption shall be submitted before the expiration date on forms furnished by the commissioner, and shall contain a sworn certification by the holder that the requirements for exemption continue to be met, and that the holder is in full compliance with this part.

(e) In the event a holder of a certificate of exemption ceases to meet the requirements for exemption, then the certificate of exemption shall be invalid.

(f) Within ten (10) days after any change in the information contained in the original application or the application for renewal, each holder of a certificate of exemption shall notify the commissioner of the change by registered or certified mail.

(g) An application for exemption shall be submitted on forms furnished by the commissioner and shall be accompanied by:

(1) A nonrefundable application fee of fifty dollars (\$50.00); and

(2) A current personal or corporate financial statement prepared by a public accountant who holds a valid permit to practice in this state.

(h) A certificate of exemption shall be granted; provided, that the application provides proof satisfactory to the commissioner that the following criteria are met:

(1) The applicant has a net worth in excess of two hundred fifty thousand dollars (\$250,000) per location where health club services or facilities are provided; and

(2) The applicant has operated under substantially the same ownership and control for at least five (5) years.

(i) For the purpose of calculating net worth as provided in subsection (h), the following are excluded:

(1) Assets which represent prepayment for future services; and

(2) Accounts receivable due from health club members for future services.

(j) Any health club which had applied for and obtained an exemption from the bond requirement under prior law shall be exempt from the provisions of this part that prohibit acceptance of a down payment for a health club agreement in an amount in excess of thirty percent (30%) of the total cost of the agreement. The exemption established by this subsection (j) shall be valid only as long as the health club operates under the same or substantially the same ownership and control that existed when the exemption was granted under prior law.

SECTION 14. Tennessee Code Annotated, Section 47-18-318, is amended by deleting the section and substituting instead the following language:

(a) In order to provide a degree of protection to members of health clubs, each health club shall post a bond of twenty-five thousand dollars (\$25,000) with the department of commerce and insurance for each location conducting business in this state. The bond may be made through deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner.

(b) The bond shall be maintained for two (2) years following the date on which the health club location ceases to conduct business in this state.

(c) In an action brought by the attorney general and reporter pursuant to part 1 of this chapter, the attorney general and reporter shall have the right to request that the total amount of the bond posted by the health club be awarded to the state for consumer restitution.

(d)

(1) This section shall not apply to any health club or health club operator that has, for at least seven (7) consecutive years, operated under substantially the same ownership and control and maintained a satisfactory registration with the commissioner.

(2) A health club's maintenance of satisfactory registration with the consumer affairs division of the department of commerce and insurance prior to July 1, 2015, satisfies the requirement for maintenance of satisfactory registration with the commissioner in subdivision (d)(1), if:

(A) The health club maintained satisfactory registration with the division for at least seven (7) consecutive years prior to July 1, 2015; or



(B) The health club maintained satisfactory registration with the division for a period of time that was less than seven (7) years immediately preceding a period of time that the health club maintained satisfactory registration with the commissioner, which, when both periods of time are added together, total at least seven (7) consecutive years.

(e)

(1) In lieu of the surety bond required in this section, a health club may file with the department of commerce and insurance a current audited financial statement prepared by a certified public accountant licensed in this state that demonstrates to the department that either the health club or its operator has a financial net worth of at least ten million dollars (\$10,000,000) available to satisfy any claims imposed by the commissioner.

(2) Any health club that files an audited financial statement in lieu of posting the surety bond required by this section shall annually file an updated audited financial statement that complies with subdivision (e)(1). Within thirty (30) calendar days of receiving information that would render the health club ineligible for exemption from the surety bond requirement under this subsection (e), either the health club or its operator shall notify the commissioner of the change in its financial status and post the required surety bond with the department.

SECTION 15. Tennessee Code Annotated, Title 47, Chapter 18, Part 3, is amended by adding the following language as a new, appropriately designated section:

The registration of health clubs shall be transferred to, and be administered by, the division of regulatory boards in the department of commerce and insurance on and after July 1, 2015.

SECTION 16. Tennessee Code Annotated, Section 47-18-1002, is amended by adding the following as a new, appropriately designated subdivision:

( ) “Commissioner” means the commissioner of commerce and insurance;

SECTION 17. Tennessee Code Annotated, Section 47-18-1011, is amended by adding the following language as new, appropriately designated subsections:

( ) Receipt of bonds for credit services businesses posted under this part shall be transferred to the division of regulatory boards in the department of commerce and insurance on and after July 1, 2015.

( ) The commissioner may prescribe fees for the filing of a bond with the department of commerce and insurance pursuant to this part. The fees shall be in an amount that provides for the cost of administering the receipt of bonds for credit services businesses. Fees may be adjusted as necessary to provide that the administration of bonds for credit services businesses is fiscally self-sufficient and that revenues from fees do not exceed necessary and required expenditures.

SECTION 18. Tennessee Code Annotated, Title 47, Chapter 18, Part 55, is amended by adding the following language as a new, appropriately designated section:

Beginning on July 1, 2015, administration of the Uniform Debt-Management Services Act on behalf of the administrator shall be attached to the division of regulatory boards in the department of commerce and insurance.

SECTION 19. This act shall take effect July 1, 2015, the public welfare requiring it.